REMARKS

In the Final Office Action[1], the Examiner:

(i) rejected claim 37 under 35 U.S.C. § 101; and

(ii) rejected claims 1-37 under 35 U.S.C. 103(a) as being

unpatentable over U. S. Patent No. 7,133,368 to Zhang et al. ("Zhang") in

view of U.S. Patent No. 5,956,716 to Kenner et al. ("Kenner").

By this Amendment, Applicants add new claims 38-45. No impermissible new

matter has been added. Claims 1-45 are pending. Of these, claims 1, 19, 37, 38, and

42 are independent.

I.   Rejection under 35 U.S.C. § 101

Applicants respectfully traverse the rejection of claim 37 under 35 U.S.C. § 101.

Claim 37 is cancelled rendering its rejection moot. Accordingly, the rejection should be

withdrawn.

II.   Rejection under 35 U.S.C. § 103(a) based on Zhang and Kenner

Applicants respectfully traverse the rejection of claims 1-37 under 35 U.S.C.

§ 103(a) as being unpatentable over Zhang in view of Kenner. The cited art, even if

combined, fails to present a *prima facie* case of obviousness.

Independent claim 1 recites a combination of elements including "requesting,

using the client application on the client, identical portions of the content from each of

the content sources in the list of the content sources," and "determining, using the client

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[1] The Final Office Action may contain statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant decline to automatically subscribe to any statement or characterization in the Office Action.

application on the client and based on requesting the identical portions of the content, a

performance metric describing an ability for the content source to support the client as

measured by the client between each of the at least two of the content sources." The

cited art, even if combined, fails to disclose or suggest all of the features of claim 1,

including the features noted above.

As discussed in Applicants' remarks of February 25, 2010, Zhang, at best,

provides a system that uses "hop-by-hop" probing process. (See Amendment of

February 25, 2010, p. 10; Zhang, col. 9, lines 9-27).

The Final Office Action, however, asserts that

> Zhang discloses connecting to the "fastest or closest game
> session or game server for it to join. Column 8, lines 37-39.
> The "game session" is the identical portion of the content
> from each of the content sources [peers] in the list of the
> content sources [peers]. The "fastest or closest game
> session or game server" is calculated by "determining, using
> the client application on the client and based on requesting
> the identical portions of the content, a performance metric
> describing an ability for the content source to support the
> client as measured by the client between each of the at least
> two of the content sources. (Office Action, p. 2)

Even if this were correct, which Applicants do not concede, Zhang still fails to

disclose or suggest "requesting, using the client application on the client, identical

portions of the content from each of the content sources in the list of the content

sources," as recited in claim 1. Instead, a peer of Zhang probes peers from a list using

the hop-by-hop probing process and "select[s] the best [p]eer with which to establish a

session." (Zhang, col. 9, lines 9-27). That is, Zhang only requests a session, which the

Office Action maps to content, from a single source on the list.

Additionally, the Final Office Action mischaracterizes <u>Zhang</u>. <u>Zhang</u> does not disclose or suggest that "[t]he 'fastest or closest game session or game server, is calculated by 'determining, using the client application on the client and based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources," at least because <u>Zhang</u>'s QoS parameters are determined using the hop-by-hop probing process, not the session request. (<u>Zhang</u>, col. 9, lines 9-27).

<u>Kenner</u> fails to cure the deficiencies of <u>Zhang</u>. That is, <u>Kenner</u> also fails to disclose or suggest the aforementioned elements, nor does the Final Office Action rely on <u>Kenner</u> to do so.

In view of the foregoing, there are significant differences between the cited art and independent claim 1 that the Final Office Action fails to address, at least because the Final Office Action relies upon a mischaracterization of <u>Zhang</u>. As such, the rejection of claim 1 should be withdrawn and the claim allowed.

Independent claim 19, while different in scope, distinguishes over the cited art for at least similar reasons to those noted above for claim 1. Claims 2-18 and 20-36 depend from one of the allowable independent claims, and additionally recite features that are neither disclosed nor suggested by the prior art of record.

Accordingly, the Final Office Action has failed to present a *prima facie* case of obviousness, and the rejection should be withdrawn.

V.   New Claims 38-45

New claims 38-45 are also allowable over the prior art record. This is because the asserted prior art, when considered alone or in any combination, fails to teach or suggest all of the features of the claims.

For example, independent claim 38 recites a computer-implemented method comprising "receiving, by the client, a set of sources that host the content; sending, by the client, a request for the content to each of the sources; receiving, by the client, a response from each of the sources; establishing the source with the shortest response time as a primary source of the content for the client; establishing, from the set of sources, a secondary set of sources of the content for the client; receiving, by the client, identical portions of the content from the primary and the secondary sources; determining, by the client, performance metrics for the primary and the secondary sources based on the received identical portions of the content; and selecting, by the client, a new primary source based on the performance metrics." The claimed combination of elements is novel and non-obvious over the cited art.

Accordingly, the Examiner is respectfully requested to consider and allow new claims 38-45.
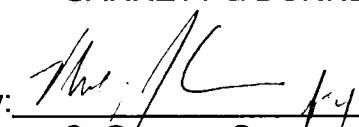
CONCLUSION

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the Examiner's reconsideration and reexamination of the application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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Dated: August 26, 2010   By: _____
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